

Reserved
Court No.2
(Sl. No.6)

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 550 of 2022

Tuesday, this the 23rd day of May, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Maj Gen Sanjay Singh, Member (A)

Hav Ramesh Kumar Dhaka (15420138-W), S/o Shri Bhinwa Ram Dhaka, R/o presently posted at Military Hospital Ram Mandir Road, Bani Park, Jaipur, Rajasthan, PIN CODE-302016.

.....Applicant

Ld. Counsel for : Applicant in person.
Applicant

Versus

1. Union of India, through the Secretary Ministry of Defence, DHQ, PO-New Delhi-110011.
2. The Chief of Army Staff, South Block, New Delhi-110001.
3. Headquarters South Western Command, PIN-908546, C/o 56 APO.
4. Senior Records Officer, Army Medical Corps Records Office, PIN-900450, C/o 56 APO.
5. Command Hospital, Lucknow, Cantonment Road, Sadar Bazar, Lucknow, Uttar Pradesh, PIN Code-226002.

.....Respondents

Ld. Counsel for : **Dr. Shailendra Sharma Atal**, Advocate
the Respondents Central Govt Counsel

ORDER

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

(a) To direct the Respondents to quash/set aside the Impugned Orders dated 26.08.2019, 14.07.2021 and 29.03.2022.

(b) To pass the directions to consider and grant discharge from service to the applicant.

(c) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.

2. Brief facts of the case are that the applicant was enrolled in the Army Medical Corps (AMC) on 18.04.2004. During the course of his service he was promoted to the rank of Naik on 01.10.2012 and Havildar on 06.02.2018. In October, 2018 while posted at Command Hospital, Lucknow he suffered with disabilities (i) Medial and Lateral Meniscus Tear Left Knee (S 83.2) and (ii) Bronchial Asthma (J45). Due to aforesaid disabilities he was placed in low medical category A3 (P) w.e.f. 23.10.2019 for first disability and P2 (P) w.e.f. 21.03.2020 for the second disability. An application dated 05.07.2019 was submitted by the applicant seeking premature discharge from service on

account of his medical disabilities and health related issues of his parents which was forwarded duly recommended by MG (Med), Command Hospital, Lucknow, on 25.07.2019 but the same was not approved and communicated vide signal dated 23.08.2019. On 26.11.2019, he applied for issue of no objection certificate for applying civil employment which was rejected vide letter dated 20.02.2020 stating that the said certificate may be issued in the last one year of service in terms of Army Order 78/79. While posted with Military Hospital, Jaipur he again submitted an application dated 11.11.2020 seeking no objection certificate to apply for Assistant Professor post in Rajasthan College of Education which was rejected vide letter dated 30.12.2020 due to shortage of manpower in the category of his trade. Further, vide his application dated 07.04.2021 he submitted unwillingness certificate to continue in service due to being placed in low medical category and future career prospects which was rejected vide letter dated 14.07.2021. Lastly, in the year 2022 he submitted unwillingness certificate dated 04.02.2022 to continue in service but it was also not agreed to vide letter dated

29.03.2022. It is in this perspective that this O.A. has been filed for grant of premature discharge from service.

4. The applicant submitted that he was enrolled in the Indian Army (AMC) on 18.03.2004 and in due course of time he was promoted to the rank of Havildar w.e.f. 06.02.2018. The applicant while on posted strength of Command Hospital, Lucknow was downgraded to permanent low medical category A3 and P2 in the years 2019 and 2020 for disabilities (i) Medial and Lateral Meniscus Tear Left Knee (S 83.2) and (ii) Bronchial Asthma (J 45) respectively. He applied for premature retirement from service on compassionate grounds vide application dated 05.07.2019 which was rejected vide order dated 23.08.2019. Thereafter, he applied for issuance of no objection certificate for applying civil employment which was also rejected vide order dated 20.02.2020 in terms of Army Order 78/79. He was posted to Military Hospital Jaipur and he again submitted application dated 11.11.2020 seeking no objection certificate to apply for Assistant Professor Post in Rajasthan College of Education but it was denied due to shortage of manpower and rules on the

subject. It was further submitted that subsequent to that two applications were submitted for premature discharge from service but both the applications have been rejected on the ground of restrictions imposed due to Covid-19 by DGMS, IHQ of MoD (Army) till 31.03.2023.

5. The applicant further submitted that his wholly dependent mother is suffering from 'Papillary Rheumatoid with Metastatic Lymph Nodes' since 2016, and is undergoing treatment at R&R Hospital, New Delhi needs care and attention. His further submission is that his younger brother is unmarried and is working as an Electrician in Barmer (Rajasthan) away from home town and cannot be transferred to home town to look after his ailing mother. Due to aforesaid compelling situations, the applicant submitted frequent applications for premature discharge from service but every time his request was turned down on the ground of shortage of manpower and restrictions imposed up to 31.03.2023 due to Covid pandemic. His further submission is that since Covid pandemic is over now and there is no deficiency of manpower in his trade, applicant be granted premature discharge from service

keeping in view of his deteriorating medical condition and domestic compulsions.

6. In support of his contention the applicant has placed reliance on the Hon'ble Supreme Court judgment in the case of **Sanjay Jain vs Union of India**, Civil Appeal No 7822 of 2011, **Central Inland Water Transport Corporation vs Brojo Nath Ganguly**, (1986) 3 SCC 156, Hon'ble Delhi High Court in **Major Rahul Shukla vs Union of India & Ors**, (1995) 34 DRJ 399 (DB), Hon'ble Delhi High Court in **KS Bhimwal Mohs (Lt Col) vs Union of India & Anr**, 79 (1999) DLT 297 and order dated 01.05.2013 passed by AFT (RB), Kolkata in T.A. No. 29 of 2012, **Hav Ashok Kumar Joshi vs Union of India & Ors**.

7. The applicant pleaded for grant of premature discharge on extreme compassionate medical grounds keeping in view of his pressing and challenging medical condition and his mother's deteriorating condition due to 'Papillary Rheumatoid with Metastatic Lymph Nodes'. It was further submitted that it has become very difficult for him to continue the administrative and professional work with justifiable strength and vigour and therefore, his premature discharge from service be

sanctioned forthwith as his case is squarely covered with aforesaid judgments

8. On the other hand, learned counsel for the respondents submitted that applicant was enrolled in the Army (AMC) on 18.03.2004 and not on 18.04.2004 as stated by the applicant. He was promoted to the rank of Naik on 01.10.2012 and Havildar on 06.02.2018. The applicant's present medical category is S1H1A3P2E1 and he will be completing his normal service limit in the year 2028 in present rank. It was further submitted that applicant's premature discharge applications could not be considered due to deficiency in Psychiatric Nursing Assistant trade to which applicant belongs to and also due to Covid pandemic restrictions imposed by the competent authority up to 31.03.2023 vide policy letters dated 07.10.2020 read with letter dated 16.10.2020 and letter dated 17.11.2020 (Annexures R-11, R-12 and R-13).

9. Learned counsel for the respondents further submitted that as per Para 164 (a) of Regulations for the Army, 1987 retirement age of Havildar is 24 years service or 47/49 years of age whichever is earlier but the applicant has completed only 18 years service.

Besides this, a restriction was also imposed in granting premature retirement till 31.03.2023 due to COVID-19 pandemic and non recruitment in Indian Army.

10. Learned counsel for the respondents further submitted that premature retirement from service at own request is being dealt with as per guidelines issued by IHQ of MoD (Army) from time to time and only genuine cases are recommended after verifying the merit of the case and Corps manpower state. He also submitted that applicant signed a contract for 20 years of colour service and 03 years of reserve liability as per terms of engagement contained in the Enrolment Form signed by him at the time of enrolment in the Army. The respondents' refusal for grant of premature retirement from service is wholly just, proper and in accordance with law and there is no illegality in the said order. Hence, applicant is not entitled for grant of premature retirement from service. He pleaded for dismissal of O.A.

11. Heard applicant in person and Dr. Shailendra Sharma Atal, learned counsel for the respondents and perused the record.

12. Applicant was enrolled in the Army on 18.03.2004 and during the course of his service he was promoted to the rank of Havildar w.e.f. 06.02.2018. The applicant suffered with medical disabilities (i) Medial and Lateral Meniscus Tear Left Knee (S 83.2) and (ii) Bronchial Asthma (J45) in the year 2019 and 2020 respectively. Due to aforesaid disabilities he was placed in low medical category A3 (P) w.e.f. 23.10.2019 for first disability and P2 (P) w.e.f. 21.03.2020 for the second disability.

13. Applicant applied for premature discharge from service on compassionate grounds but it was not allowed. He again applied for issue of no objection certificate to apply for civil job which was not issued in terms of Army Order 78/79 and Army Medical Corps Record Office Instructions No. 21/2014 which stipulates as under:-

(a) Within one year of the date of retirement which includes the period of leave pending retirement.

(b) When placed in such a permanent low medical category as is unacceptable for further retention, within one year of completion of specified service, those who have already completed the specified service from the date of announcement of medical board proceedings to them.

*(c) When placed in such a **permanent low medical category which prevents to detail a***

person on promotion cadre/course or debars him from further promotion in the Army, subject to the exigencies of service.

14. The aforesaid rule provides that an individual may be granted no objection certificate one year prior to his date of retirement which in the instant case is not applicable as the applicant has completed only 18 years service but sub para (c) above is applicable in case of the applicant as per which an individual may be granted no objection certificate if he is placed in permanent low medical category which debars further promotion. In the instant case we find that the applicant was placed in low medical category which debarred his further promotion. For convenience sake, remarks of Administrative Officer dated 08.02.2022 endorsed on his premature discharge application are reproduced as under:-

"RO AMC has denied indl's previous request of PMR up to 31 Mar 2023 due to defi of pers in respective trade. Indl is placed in Med Cat A3 (P) and is not eligible for further promotion. 'R' & fwd."

15. Application for grant of premature discharge from service in respect of the applicant was turned down vide Headquarters South Western Command letter dated 30.09.2021 with endorsement that *'he is advised*

to apply for premature discharge after 31.03.2023'.

For convenience sake, extract of letter dated 30.09.2021 is reproduced as under:-

*"1 and 2. x x x
3. The above indl has been interviewed by MG Med on 11 Sep 2021 and has been advised to apply for PMR after 31 Mar 2023."*

16. Thus, from the aforesaid it is noticed that due to restriction imposed on premature discharge on account of Covid pandemic the competent authority had advised applicant to submit application for premature discharge after 31.03.2023 which date in the instant case has already expired meaning thereby restriction imposed on premature discharge due to Covid pandemic has been withdrawn and applications may be considered.

17. It is true that at the time of enrolment certain terms and conditions are laid out in the offer of appointment and an individual has to accept the same in order to join service. No doubt, it was a contract at that point of time. But once an individual joins service, he is governed by service rules and regulations. In the relevant service rules, there is a provision for voluntary retirement or premature discharge on stated grounds. Therefore, the applicant has a right to submit such application on medical grounds/compassionate

grounds/family problems such as due to ill health of his parents.

18. We find that respondents have cited deficiency of personnel in applicant's trade as a ground for rejecting his request. We are, however, of the view that his early discharge will not prejudice the respondents in any manner. Considering all aspects of the matter i.e. low medical category of the applicant, improved Covid Pandemic situation and recommencement of recruitment in the Army, we are of the view that applicant's case for premature discharge from service deserves to be allowed.

19. Accordingly, Original Application is **allowed**. The respondents are directed to allow his premature discharge application on extreme compassionate grounds keeping in view the low medical category of the applicant, overall improved situation post Covid-19 Pandemic and also commencement of recruitment in the Indian Army, within a period of four months from the date of this order and communicate the decision to the applicant accordingly.

20. No order as to costs.

21. Pending Misc. Applications, if any, shall stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated : 23.05.2023

rathore

(Justice Anil Kumar)
Member (J)